TESTIMONY OF ROY NEEL
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UNITED STATES TELECOM ASSOCIATION
BEFORE
THE COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION
UNITED STATES SENATE

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Thank you, Mr. Chairman, for giving me the opportunity to testify. I am the President and Chief Executive Officer of the United States Telecom Association (USTA). I am here today on behalf of the over 1100 incumbent local exchange carriers throughout the nation that USTA represents. We appreciate your conducting this vital and timely hearing because our members are on the front lines of the Internet and the thrust of my testimony today is that the current Internet regulatory environment must be reformed.

We need to pass legislation this year that deregulates the offering of DSL and provides interLATA relief for the RBOCs with respect to data services. We must level the playing field with cable modem service.

This relief is not only for the RBOCs but for the over 1000 mid and small companies that USTA represents that offer DSL and are burdened by regulations not faced by their direct competitors – cable modem service.

We are at a critical stage in this country in that we already face a series of digital divides. A great deal of attention has already been paid to the digital divide and separating affluent consumers from poor and middle income consumers. The growing divide between white and minority populations has also been addressed. There are two additional types of digital divides that I am going to focus on today. The first is a digital divide between large businesses and small businesses. The second is the digital divide between urban/rural.

I commend Senators McCain, Brownback, Dorgan, Kerry, Snowe, and Rockefeller for all recognizing the crisis that this country faces with respect to high speed access and the Internet and for taking the lead and introducing their respective bills.

I) HIGH SPEED INTERNET ACCESS – ANOTHER DIGITAL DIVIDE

Today, high speed Internet access is made available on an economically feasible basis three ways. First, there is fiber optic cable. This is being provided primarily by Competitive Local Exchange Carriers (CLECs). The laying of these fiber optic cable is the reason why you see the city streets being torn up time and again, but CLECs are not deploying fiber in rural areas.

The second way is Digital Subscriber Line service (DSL). DSL is a service that incumbent telephone companies (ILECs) and others provide. By adding advanced equipment and conditioned local telephone lines, high speed Internet access by means of DSL can be provided over the same copper wires used for plain old telephone services. Data Local Exchange Carriers (DLECs) also offer DSL service, but it is almost an entirely derivative service, as DLECs are able to provide their service only by collocating their equipment in the ILEC's central telephone office and by making use of the ILECs local telephone wires, which ILECs are required by law to provide to DLECs at very low rates. DSL deployment in all areas, but especially in rural areas is being constrained by the lack of regulatory

relief for these advanced services.

Third, cable operators provide high-speed access to the Internet by means of high capacity (broadband) cable wires. This is called cable modem service and is primarily a residential service.

What then is the Digital Divide? The CLECs provision of high speed access is almost exclusively limited to business customers located in downtown business areas or in an edge city. In Washington, for instance, that means the K Street corridor and Tysons Corner. Cable operators because of their historical provision of cable television service are located and provide service to primarily residential customers. So, if your area business is not located downtown or in an edge city, your only real possibility for high-speed Internet access is DSL, and unfortunately DSL is the only one of these three approaches subject to significant regulatory constraints and requirements. DSL service only exists in some areas, even in urban areas, because pervasive regulation is retarding deployment. It is, thus, not available everywhere.

If you are either a business or residential customer in a rural area where their exists limited Internet backbone facilities and little or no high speed access you are doubly burdened in your ability to obtain high speed Internet access, as you will have neither local nor long haul Internet access. If you are business customer located in a downtown business district and you want a competitor to the CLEC service, DSL is your only option, because again cable modem service is primarily located in the residential areas. To see the benefits of competition in the high-speed access market, we need to encourage the deployment of DSL, not hamper its deployment by unnecessary government regulation.

Before continuing, let me summarize what we consider to be the current factors limiting the future development of the Internet, especially for rural, residential and small and medium business customers. First, there is the fact that DSL is pervasively regulated while other high speed Internet access services are unregulated. Second, especially in rural areas, but also generally everywhere, the restriction on the BOCs which limits their ability to transmit data across LATA (local access and transport area) lines limits the opportunity to expand the Internet backbone. The 1996 Act provisions that were intended to ameliorate this situation have not proven effective and the interLATA relief contemplated by the 1996 Act has produced to date authority to cross LATA lines in only one state. These LATA lines are the product of the 1982 AT&T breakup, so they were clearly not drawn with the Internet in mind, but these 1982 lines are frustrating the development of the Internet, especially in rural areas.

INTERNET REGULATORY FREEDOM

SECTION 706

Section 706 required the Federal Communications Commission (FCC) to initiate within 30 months of enactment of the 1996 Act an inquiry concerning the availability of advanced telecommunications capability. The FCC commenced the inquiry in August 1998. The purpose of that inquiry was to determine whether "advanced telecommunications capability" was being made available to "all Americans in a reasonable and timely fashion." Section 706 defined advanced telecommunications capability as "high speed switched broadband telecommunications capability." If the FCC found that this goal was not being achieved, Section 706 required it to "take immediate action to accelerate deployment." One of the principal means that Congress intended and provided to be used if this goal was not being achieved was "regulatory forbearance."

FCC SECTION 706 REPORT (FEBRUARY 28, 1999 - CC DOCKET 98-146)

After studying the matter for six months, the FCC concluded on January 28, 1999 that reasonable and timely deployment of "high speed switched broadband capability" was occurring so no "immediate action" of any consequence was required. At that time,

the FCC said that high speed Internet access penetration was an acceptable .4%. Even this low figure was an overstatement of the actual penetration in that the FCC appears to have measured penetration based upon the number of high speed access customers as a percentage of residential households - not residential households and businesses. Adding businesses to this calculation would have produced an even lower penetration number. Today, 14 months after the FCC Reports and using the FCC's same methodology there is only 1.45% high speed access penetration.

Section 706, thus, was intended to address some of the very problems that I have identified. If regulatory requirements were constraining the deployment of advanced telecommunications in a reasonable and timely manner, Section 706 instructed the FCC to eliminate them. The FCC, however, has interpreted Section 706 so narrowly as to virtually write Section 706 out of the Act. Section 706 was intended, in our view, to be standalone authority to deal with this specific problem. The FCC, however, determined that Section 706 was constrained by other provisions of the 1996 Act dealing with voice telephone matters. Since the FCC refuses to acknowledge that the statistics show that deployment of advanced services is not happening in a reasonable and timely manner, I believe the Congress must act again in a manner that has no such statutory interpretation limitations.

THERE IS A DIGITAL DIVIDE AND IT CONTINUES

My testimony today is that there are multiple digital divides. The digital divide exists at the local level for both access generally and for high speed Internet access and on the long distance level for Internet backbone. I would reiterate and emphasize once again that one of the primary reasons for this failure to close the high speed access digital divide and Internet backbone divide is regulatory constraints which add cost, time, effort and lack of flexibility to services being offered in a market that one considers to be a monopoly.

FCC Chairman Kennard even refers to this market a "no-opoly" market. DSL (Digital Subscriber Line) service offered by incumbent local exchange carriers is pervasively regulated, everything from tariffs to depreciation to annual reports to rate regulation. I brought this regulatory disparity situation to the Committee's attention last November in my testimony. Things have not changed since then. Services functionally equivalent to DSL are not subject to any significant regulation, with cable modem services being the classic example - cable operators call this a cable service. Not surprisingly, cable modem service is growing at a faster rate than DSL. The net effect is that major telecommunications providers, the ILECs, who would do more, could do more and want to do more are frustrated by a regulatory regime designed to regulate two-way voice service in the monopoly service era of 1934! I believe the prevailing Congressional wisdom is that the Internet should not be regulated. When these DSL services are subject to regulation, government regulation has been extended and applied to the Internet - make no mistake about it.

BUSINESS CUSTOMERS

For the residential customer, high-speed Internet access is a way to avoid the "world-wide wait." To the business customer, high-speed access may be essential, even for many businesses that we ordinarily do not consider to be part of the new economy. If your business is located in the downtown area of a major city or in an edge city (e.g., Tysons Corner), you have a plethora of high speed access service providers and service options and

Since 1992, our industry has contracted with iMapData.com to evaluate and map for us where competitive local exchange carriers (CLECs) are deploying their fiber optic lines in order to provide broadband service. During this eight-year period of study, what we learn each year from these studies is that the CLECs just continue to build one on top of the other, in the same geographic areas to service business customers. The only real significant difference from year-to-year is that we have more CLECs digging up the same streets to provide service to the same class of al significant
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blueprints, engineering schematics, design schematics, CAD files, X-rays, Cat scans, MRIs.

Medical facilities and physicians are a special case according to our study by iMapData.com as doctors split their time between their offices/clinics and their hospitals. They rely on high speed Internet transmission of X-rays, CAT scans, MRIs and all the schematic tools of their trade. Downloading and uploading of data-dense schematics are almost impossible at standard modem speeds.

RURAL AREAS

If you are on the wrong side of the digital divide, such as in rural areas, your continued survival and prosperity may just depend on the ability to obtain affordable high-speed access just as in the past these areas depended upon highways, waterways and railroads. The added costs and limitations caused by government regulation merely exacerbate an already bad situation. Small towns and rural areas without high speed Internet access will continue to find it even more difficult to attract jobs and industry.

ADVANCED ILEC SERVICES SHOULD BE DEREGULATED

If the Congress or the FCC, for that matter, want to accelerate broadband deployment, they can do so by deregulating these services. All of the major broadband bills currently before the Congress move positively in this direction: Senator McCain (S-1043), Senator Brownback (S. 877), Congressmen Tauzin and Dingell (HR 2420), Congressman Goodlatte (HR 1686) and Congressman Boucher (HR 1685). All of these bills would create an incentive for ILECs to deploy broadband capability.

Before considering other ideas and approaches to this problem, such as tax incentives and universal service subsidies, we urge you to eliminate the regulatory constraints first. After deregulation, you can then evaluate what occurs in a deregulated environment. You as policymakers can then with more precision target the areas that should really be the beneficiaries of such tax credits or regulatory subsidies.

II. INTERNET BACKBONE - STILL ANOTHER DIGITAL DIVIDE

Attached to my testimony and on the chart behind me is a map of the United States which you may have seen before. I use it in conjunction with my testimony, because it compellingly shows the need and justification for interLATA data relief. It also shows the rural digital divide. Can anyone deny it after looking at this map? The map shows the location of Internet backbone POPS (points of presence) also called Internet hubs. A POP or hub is a high speed ramp using a highway analogy. It is the place where you get on the Internet backbone network. If you are a long distance from a POP, your service will be more costly and in many cases you will suffer service degradation.

Look, for instance, at the Upper Tier of States running West from Minnesota to Washington. There just are not any POPs. In these states, you have a very long way to go just to get connected to the Internet much less on a high speed basis. As you can further see, however, there are areas just like this in the regions of every Bell operating company (BOC), not just US West.

The Internet POPs depicted on these maps are like train stations using a rail analogy and the Internet backbone can be analogized to the rail network connecting the cites. You need to be able if you are an ISP to get to this POP (hub) in order to participate in the Internet and all of its e-functions. The greater the distance from a town to an Internet hub (POP), the more expensive the service, the constrained the speed of the service, and the more limited the service offerings. These towns can get on the slower, narrowband Internet, but cannot acquire high speed broadband connectivity at a reasonable price, if at all.

The broadband Internet is fast becoming an essential infrastructure for business. Broadband e-commerce applications are providing are providing enormous choice, value, and benefit to users, and e-business is quickly becoming an essential tool for the manufacturing, service, and agricultural sectors. Communities not served by

Internet backbone hubs risk losing critical industries to connected cities, and their citizens risk missing out on the full educational and commercial benefits of the Internet.

The backbone hubs necessary for providing such benefits, however, are to a large extent available only in the country's largest metropolitan areas. Smaller cities and non-metropolitan areas do not have the same access to these high-speed connection to a backbone hub, and while over one thousand hubs (POPs) have been put in place, less than one hundred are in non-metropolitan areas. In fact, 60.7 percent of all metropolitan areas do not have a connection to a Internet backbone hub (POP). Therefore, the vast majority of Americans do not have direct access to the Internet backbone in their own communities.

Network economics and the nature of telecom markets give strong incentives to deploy networks in densely populated and high-income areas. In addition, regulations affecting investment, markets, and suppliers also impact backbone deployment. The RBOCs are uniquely positioned to address this problem and are the only ones prevented from doing so.

Let me not fail to mention one additional thought: The Internet backbone is being increasingly concentrated in a few hands -- evidence the merge of MCI WorldCom and Sprint. For competitive reasons, BOCs entry into this market will go a long way causing this concern to evaporate.

MYTHS ABOUT INTERLATA DATA RELIEF

I would like to take a moment to clarify some confusion regarding the implications of the deregulatory relief I have suggested.

First, critics claim the Internet deregulations I'm suggesting will undo reforms of the 1996 telecommuncations act. **Not True**. In 1995, the commercial Internet was still in its infancy. The Internet deregulation I am proposing would leave the current telephone regulation intact.

Second, critics contend that this deregulation removes the Bell's incentives to satisfy Section 271 of the Telecom Act which requires the companies to open their local markets to competition before entering long distance. **Not True**. These bills do not change voice regulation. The BOCs cannot offer voice long distance until they get Section 271 approval from the FCC. About 80 cents of every dollar for long distance service is for voice service. This presents quite a market incentive.

Conclusion

Congress needs to address the digital divide issue this year. Clearly, we are beyond debating whether there really is a digital divide or a problem that needs to be addressed – with five bills introduced or about to be introduced that address high speed Internet access and deployment to rural areas everyone acknowledges that there is a problem. We support all of the Senators that have taken the lead on this issue and strongly urge that any legislative solution to address the digital divide deregulate the offering of DSL and provide interLATA relief to the RBOCs for data.